

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MILLARD GUTTER COMPANY a  
Corporation d/b/a MILLARD ROOFING AND  
GUTTER;

Plaintiff,

vs.

DEPOSITORS INSURANCE COMPANY,  
and NATIONWIDE PROPERTY AND  
CASUALTY INSURANCE COMPANY, a/k/a  
NATIONWIDE INSURANCE, a/k/a  
NATIONWIDE,

Defendants.

CASE NO: 8:23-CV-82

**DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

**COME NOW** Defendants Depositors Insurance Company and Nationwide Property and Casualty Insurance Company (hereinafter “Depositors” and “Nationwide”, individually and “Defendants” collectively), and hereby move the Court for an Order granting summary judgment in Defendants’ favor on all claims of breach of contract made by Plaintiff Millard Gutter Company (“Millard Gutter”) against Nationwide, as there is no genuine issue of material fact that Nationwide is *not* a party to any insurance contract involved in Plaintiff’s action. Defendants further seek an Order granting summary judgment in Defendants’ favor on all claims of bad faith and/or breach of the implied warranty of good faith and fair dealing made by Millard Gutter, for the reasons that such types of claims are *not* assignable under Nebraska law, the named insured under the policy of insurance issued by Depositors is *not* a party to this action, and as such Millard Gutter is not the real party in interest and lacks standing as a matter of law to assert such claims against either Defendant, and Millard Gutter’s claims of bad faith in this matter should be dismissed with prejudice. *Please see, Millard Gutter Co. v. Shelter Mut. Ins. Co.* 312 Neb. 606 (2022); *Millard Gutter Co. v. Farm Bureau Prop. & Cas. Ins. Co.*, 312 Neb. 629 (2022).

**WHEREFORE**, Depositors Insurance Company and Nationwide Property and Casualty Insurance Company respectfully request an Order from the Court granting Nationwide Property and Casualty Insurance Company summary judgment in its favor and against Millard Gutter on its claim(s) of breach of contract and bad faith (and/or breach of the implied covenant of good faith and fair dealing); and granting Depositors Insurance Company partial summary judgment in its favor and against Millard Gutter on its claim(s) of bad faith (and/or breach of the implied covenant of good faith and fair dealing), and for such other and further relief as the Courts deems just and equitable.

**DATED** this 20<sup>th</sup> day of August, 2024.

DEPOSITORS INSURANCE COMPANY and  
NATIONWIDE PROPERTY AND CASUALTY  
INSURANCE COMPANY, Defendants.

By: /s/Matthew D. Hammes  
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*ATTORNEYS FOR DEFENDANTS*

**CERTIFICATE OF SERVICE**

**THE UNDERSIGNED** hereby certifies that on the 20<sup>th</sup> day of August, 2024, the forgoing was filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all registrants.

/s/ Matthew D. Hammes